

R E M A R K S

Davis, cited by the above identified Office communication as rendering the claims 1-5 and 8 of the present invention obvious over the admitted prior art, as entitled, is drawn to "method and recording for producing sounds and messages to achieve alpha and theta brainwave states and positive emotional states in humans." Davis explicitly teaches, "by reducing an individual's brainwave states to the alpha and beta 'relaxation' levels, the individual is sufficiently relaxed for accelerated learning to occur. The mind achieves a restful alertness, where concentration is at its best" (column 3, lines 55-59).

To achieve these alpha and theta "relaxation" levels, the sound portion of Davis' method and recording is produced to have gravitating tempos, which preferably decrease from about 60 to 120 beats per minute to about 40 to 60 beats per minute, in about 2 beats per minute manually produced uniform decrements (column 4, lines 10-26). And to achieve accelerated learning, the message portion of Davis' method and recording is simultaneously played back at substantially the same uniform gravitating tempos as the music portion (column 4, lines 27-36).

Davis by his method and recording thus is solely concerned to produce, by the gravitating tempos of his music, the alpha and theta brainwave states and correlated positive emotional states conducive to learning, and in concert therewith to produce, by the synchronous, gravitating tempos of his message, accelerated learning. For this reason, the opinion of page 2 of the above-identified Office communication, that "Davis teaches of the Beta (alert), Alpha (relaxed), Theta (drowsy) and Delta (sleep) brainwave states. These are well known in the art. Davis teaches of relaxing an

individual. The examiner asserts that when an individual is relaxed, they can rest or sleep. Therefore it would have been obvious to one of ordinary skill to use the teachings of Davis to induce sleep by playing sounds and decreasing their playback rate over time," misconstrues Davis and attributes to Davis what Davis in fact teaches away from.

Although Davis lists delta brainwave states in the table at the top of the column 3, what Davis' method and recording teaches, as made clear by the foregoing discussion and by Davis among other places at column 1, lines 9 -18, lines 34-39, lines 57-68, and the top of column 2, lines 1-3; and at column 2, lines 18-26, are such gravitating tempos of music and speech as induce the alpha and theta brainwave states, a "relaxation" that enhances alertness, and enhanced cognitive learning, something different in kind and antithetical in purpose to the relaxation and its drowsiness that slips away into sleep, in order to rest mind and body and thereby to escape any and all external stimuli, as in the above-captioned application.

By the present amendment, the independent claims 1 and 2 in apparatus and method format have been further amended to patently distinguish the present invention over the combination of the admitted prior art and Davis and now call for digital relaxation machines and methods for playing a prerecorded sound to induce sleep. The bodies of these claims further specify, among other things, that the claimed certain number of third time intervals and the claimed each said another, progressively slower rate, are selected to so replay the sound samples selected as to induce sleep.

If the admitted prior art were modified by Davis the digital sound samples thereof necessarily would have the taught generally uniformly decrementing gravitating tempos of message and musical portions cooperative to induce his positive emotional relaxation states conducive to alertness and to

learning what is spoken audibly in a manner enhanced by that relaxed alertness. The combination of the admitted prior art with Davis would therefore teach away from these further limitations of the present invention rather than render claims 1 and 2 obvious. Accordingly, it is respectfully submitted the invention of the independent claims 1 and 2 as now amended are readily patentably distinct from the combination of the admitted prior art in view of Davis. Reconsideration, withdrawal of the rejection and early allowance of the independent claims 1 and 2 as now amended are accordingly respectfully requested.

Indeed, as disclosed by the present specification among other places at pages 37-39, and as pointed out in the independent claims 1 and 2 as now amended, the duration of each prerecorded sound sample at record rate is replayed in programmed sleep-induce mode a certain number of third time intervals each at another progressively slower playback rate, the certain number of third time intervals and progressively slower playback rates being selected to induce sleep, such that, during each third interval the selected sound sample is replayed that whole number of times its sample duration, ratioed by its record and each another progressively slower playback rate, is contained in each third time interval. If Davis' uniformly declining in about 2 beats per minute gravitating tempos to entrain alpha and theta brainwave states to "relax" in order to enhance learning were used as the playback pattern of the sound machines of the admitted prior art, the combination would cause the sounds thus replayed to so "relax" as to stimulate the listener to enhanced cognitive learning, but not render obvious, because something quite antithetical to, these further sleep inducing limitations of the claims 1 and 2 of the present invention. Since the combination does not teach or even remotely suggest these further limitations, it is respectfully submitted the invention of the

independent claims 1 and 2 as now amended is not obvious over the admitted prior art in view of Davis. Reconsideration, withdrawal of the 103 rejection and allowance of the claims 1 and 2 accordingly are respectfully requested.

The preamble of independent claim 3 has been amended to similarly call for a digital sound machine for inducing sleep; dependant claim 4 has been canceled and its subject matter has been incorporated in claim 3; and similar amendments to its body as in amended independent claims 1 and 2 have been made. Since independent claim 3 has been amended along the same lines as the independent claims 1 and 2, independent claim 3 as now amended is for the same reasons likewise believed to be in allowable condition and as such need not be further discussed.

With respect to independent claim 5, as now amended its preamble calls for a digital sound machine having dual sound replay modes, to soothe the listener by masking noise in one of its modes and to induce sleep in the other of its dual sound replay modes, and its body calls for a processor-implemented sound controller operative in sleep-induce mode to replay a digital sound sample in accord with a preselected second sound pattern selected to induce a listener to fall asleep. Since Davis does not fairly teach or even remotely suggest a sleep-induce mode, but indeed, teaches away from it, Davis does not teach or objectively suggest to one of skill in the art to modify the admitted prior art with Davis to provide the invention of independent claim 5 as now amended. Accordingly, the subject matter of amended independent claim 5 is believed to be allowable as unobvious over the admitted prior art in view of Davis, and its allowance is also respectfully requested.

With regard to the claims 6-8, these claims have been canceled by the present amendment. Accordingly, further discussion of these claims and of the rejection thereof is believed to be rendered moot.

Claims 1-3 and 5 remain in the case. Reconsideration and favorable action accordingly are hereby respectfully requested.

Respectfully submitted,

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